APPENDIX J
REQUIREMENTS FOR THE LAND USE/TRANSPORTATION ANALYSIS PROGRAM FOR LOCAL JURISDICTIONS IN THE SAN BERNARDINO VALLEY AND VICTOR VALLEY AREAS

J.1. Background

Section VIII of the Measure I 2010-2040 Ordinance (approved by the voters of San Bernardino County on November 2, 2004) states:

"*SECTION VIII. CONTRIBUTIONS FROM NEW DEVELOPMENT. No revenue generated from the tax shall be used to replace the fair share contributions required from new development. Each local jurisdiction identified in the Development Mitigation Program must adopt a development financing mechanism within 24 months of voter approval of the Measure 'I' that would:*

"1) Require all future development to pay its fair share for needed transportation facilities as a result of the development, pursuant to California Government Code 66000 et seq. and as determined by the Congestion Management Agency.

"2) Comply with the Land Use/Transportation Analysis and Deficiency Plan provisions of the Congestion Management Program pursuant to California Government Code Section 65089.

"The Congestion Management Agency shall require fair share mitigation for regional transportation facilities through a Congestion Management Program update to be approved within 12 months of voter approval of Measure 'I'."

The above requirements apply to the San Bernardino Valley and Victor Valley cities[1] and unincorporated spheres of influence associated with those cities. Local jurisdictions in these areas must implement development mitigation programs that achieve development contribution requirements established by the SANBAG Development Mitigation Nexus Study (Nexus Study). The development contribution requirements are established by the Nexus Study for regional transportation improvements, including freeway interchanges, railroad grade separations, and regional arterial highways on the Nexus Study network.

Implementation of a development mitigation program is required of each local jurisdiction in the Valley and Victor Valley to maintain conformance with the SANBAG Land Use/Transportation Analysis Program of the CMP (see Chapter 4). The provisions of Appendix J are a part of the CMP Land Use/Transportation Analysis Program. In addition, the CMP requires SANBAG to make an annual finding of local jurisdiction conformance to the provisions of the CMP. To support this finding, each jurisdiction must prepare a brief annual report demonstrating its continued compliance with the provisions of the CMP. The annual reporting requirements are discussed in Section J.8 of this appendix.

[1] San Bernardino Valley cities include: Chino, Chino Hills, Colton, Fontana, Grand Terrace, Highland, Loma Linda, Montclair, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Upland, and Yucaipa. Victor Valley cities include: Adelanto, Apple Valley, Hesperia, and Victorville.

The requirements contained in this appendix are in response to the provisions of Section VIII of the Measure I 2010-2040 Ordinance. The requirements are based on the Development Mitigation Principles adopted by the SANBAG Board of Directors in July 2004. These principles are referenced in Chapter 4 of the CMP. The requirements in this appendix describe the key procedures local jurisdictions must follow when implementing and maintaining a conforming fair share development mitigation program.

J.2. Preparation of the Development Mitigation Nexus Study

SANBAG has prepared and shall periodically update a Development Mitigation Nexus Study to identify minimum fair share contributions from new development for regional transportation improvements (freeway interchanges, railroad grade separations, and regional arterial highways). The current version of the Nexus Study, which includes grade separation and major arterial projects submitted by local jurisdictions and interchange fair share cost percentages agreed to by local jurisdictions, is contained in Appendix K of this CMP. The Nexus Study will be updated every odd year in close coordination with local jurisdictions. The updates will occur in conjunction with the biennial update to the CMP, and SANBAG will notify local jurisdictions prior to initiating the update. During the update process, local jurisdictions will be provided an opportunity to review and comment on the Nexus Study and to approve inclusion or exclusion of projects within their jurisdictions.

J.2.1 Nexus Study Project List

The Nexus Study identifies a Nexus Study Network, representing regional roadways in the urbanized areas of San Bernardino County. This network is based on a generalized set of criteria including roadway functional classification, propensity to carry inter-jurisdictional traffic, and connection to the freeway system. The Nexus Study Network may be modified as part of a Nexus Study update. SANBAG is responsible for determining the inclusion or exclusion of a proposed regional roadway on the network. Local jurisdictions are responsible for the inclusion or exclusion of projects on the network.

Roadway improvement projects must be located on the Nexus Study network for their costs to be included in the Nexus Study. Projects must be located on the Nexus Study Network to be eligible to receive SANBAG Measure I 2010-2040 Valley Interchange and Major Street Funds (31% of Valley subarea expenditure plan funds) and Victor Valley Major Local Highway Projects Funds (25% of Victor Valley subarea expenditure plan funds) or SANBAG allocations of state or federal transportation funds included in the Measure I 2010-2040 Expenditure Plan. The SANBAG Board may establish additional eligibility requirements for projects included in the Nexus Study. Local jurisdictions may wish to identify other local or non-regional improvements as part of their overall development mitigation program, but these will not be included in the Nexus Study

The Nexus Study will identify specific improvement projects on the Nexus Study Network and include cost estimates for those projects. The initial cost estimates were provided by local jurisdictions using the most recent available data. Annually, project costs will be updated by the application of a cost escalation factor. The escalation of project costs is necessary to ensure that development mitigation escalate at the same rate as project costs. Jurisdictions will also have the opportunity to perform a more detailed review of project costs during Nexus Study updates. Updated project costs must be based on engineering estimates or another technically defensible planning-level study, including project study report, project report etc.). Local jurisdictions may be required to demonstrate to SANBAG that the estimates are reasonable and provide an accurate basis for cost escalation.

Project costs may include costs associated with project study reports, preliminary engineering, environmental documentation, design, construction, construction management, project management, right-of-way, and mitigation of impacts or any other component of project development and delivery. Local jurisdictions must indicate the basis for their cost estimates and expend development contributions only on the types of cost items and phases of project development included in their cost estimates. For costs other than construction to be included in the Nexus Study project list, jurisdictions must specify costs for projects by phase and include the information in their local development mitigation program in addition to the Nexus Study.

Preparation of a local jurisdiction nexus study or other analyses supporting their development mitigation program may be included in the jurisdiction's cost estimate, if the study or analysis is consistent with California Government Code 66000 et. seq. In the cost estimate for arterial projects, local jurisdictions may not include costs of improvements such as sidewalk, curb and gutter and match-up pavement along undeveloped frontages, for which developers would ordinarily be responsible. Such costs may be included when frontages are already developed, are otherwise undevelopable (e.g. easements or permanent open space), or have other circumstances that make it infeasible for a developer/property owner to construct the frontage improvements. Such circumstances must be specified in the local jurisdiction development mitigation program.

If a new project is added to the project list following the initial adoption of the Nexus Study, the revised fair share development contribution will be calculated as if the project had been included at the inception of the development mitigation program. It is acceptable for local jurisdictions to substitute projects in the Nexus Study so long as the cost of the replacement project is of equal or lesser value. If a jurisdiction wishes to substitute a more expensive project for a less expensive project, the revised fair share percentage for the net increase to the development mitigation program will be calculated as if the project was included from the inception of the development mitigation program. Jurisdictions are subject to the provisions of state law regarding addition, deletion or substitution of projects.

J.2.2 Socio Economic Data and Development Mitigation Fair Share Percentages

The SANBAG Nexus Study includes an estimate of growth in dwelling units and employment expected over the planning period of the Nexus Study. These estimates will be prepared by local jurisdictions in conjunction with SANBAG and SCAG. The planning period for growth estimates will remain 2004 to 2030, corresponding to the timeframe for the project lists. Supplemental nexus studies with new project lists and a new planning horizon with revised growth estimates will require authorization by the SANBAG Board and will be structured as an overlay of the existing 2004-2030 program.

The Nexus Study will include an estimate of minimum fair share development contributions for regional transportation improvements based on the estimates of project costs and the growth data provided by local jurisdictions. The methodology employed to calculate fair shares is the same methodology used in the draft SANBAG Development Mitigation Nexus Study, as revised September 2005. It is the goal of SANBAG to maintain and use the most accurate data available when calculating development fair share contributions. As such, the factors used in calculating development contribution targets may be updated to better reflect the most current data and studies on project costs, growth, and travel characteristics. Year 2004 will continue to serve as the Nexus Study baseline year and year 2030 will continue to serve as the horizon year for purposes of calculating minimum fair share percentages. Growth forecasts should be logically related to the Regional Transportation Plan growth forecasts and may be updated following RTP approvals.

The Nexus Study will calculate minimum fair share targets for each local jurisdiction and for the jurisdiction's sphere of influence. Fair share amounts for special districts or subareas may also be calculated based on the Nexus Study methodology if that information is provided to SANBAG by a local jurisdiction. For SANBAG to calculate fair share contributions for sphere areas, special districts or subareas, the city or County must identify the specific geographic boundary of any special districts or subareas used as the basis for the calculation of fair shares, and the growth estimates must be consistent with the boundaries they have defined.

J.3. Qualifying Local Jurisdiction Development Mitigation Programs

Each local jurisdiction in the San Bernardino Valley and Victor Valley shall prepare a development mitigation program that is projected to meet or exceed the fair share requirement for development contributions identified in the most current SANBAG-approved version of the Nexus Study. The program must meet or exceed the requirement for each individual program area (i.e. regional arterials, interchanges, and railroad grade separations) listed in the Nexus Study. The local jurisdiction has flexibility in designing a development mitigation program that achieves the level of contributions from new development consistent with that jurisdiction's total fair share requirement in the Nexus Study.

Types of development contributions may include a development impact fee (DIF) program, programs of road and bridge benefit districts, other special assessment districts, community facilities districts (CFDs), or other development contributions and funding consistent with the Measure I 2010-2040 ordinance and the SANBAG CMP. Each local jurisdiction must establish a clear definition of the sources of funds for inclusion in the development mitigation program.

Each local jurisdiction in the San Bernardino Valley and Victor Valley must maintain a qualifying development mitigation program, approved by the City Council (or Board of Supervisors) as of November, 2006. Local jurisdictions may maintain development mitigation programs for local (non-regional) transportation improvements. However, costs associated with non-regional improvements will not be included in the SANBAG Nexus Study and will not constitute part of SANBAG's fair share requirements. In evaluating a local jurisdiction's development mitigation program for compliance with CMP, SANBAG staff will exclude development contributions for transportation facilities not included on the Nexus Study Network.

Local jurisdictions may update their development mitigation programs at any time. Any updates must maintain compliance with CMP requirements. SANBAG must be notified of the intent to amend the program at least 60 days prior to amendment and full documentation of the amendment must be provided to SANBAG within 30 days following local jurisdiction approval. This includes any amendments to the program made as a result of annexations. For amendments made due to annexations, sufficient information (e.g. transfer of growth and project costs from the County to a city) must be provided to allow SANBAG to determine how each jurisdiction's fair share target amount is affected, which will allow local jurisdictions to subsequently modify their development mitigation program. However, a formal revision of the Nexus Study by SANBAG will not occur until the next Nexus Study update cycle.

Local jurisdiction development mitigation programs must annually incorporate an adjustment of project cost estimates. The city council/Board of Supervisors must approve the adjustments on an annual basis and reflect those adjustments in local development impact fees or other per-unit mitigation levels or assessments. The adjustments shall be based on an escalation factor approved by the SANBAG Board of Directors. The adjustment must be adopted by the city council/Board of Supervisors by either January 1 or July 1 following the approval of the escalation factor by the SANBAG Board, depending on the timeline chosen by the local jurisdiction and documented in the Nexus Study. The Nexus Study includes a list of local jurisdiction development mitigation program update adoption timelines.

Completed projects will remain in the Nexus Study project list. Following project completion, the Nexus Study will be updated to include the actual project cost for the project. Each year, project costs for completed projects must be escalated based on the SANBAG Board approved escalation factor. The escalation of costs for completed projects ensures that all development that benefits from a project pay for its fair share of the project.

J.4. Maintenance of Local Jurisdiction Development Mitigation Funds

Contributions and funding from new development for regional transportation improvements will be retained and managed by local jurisdictions until expended. Each local jurisdiction must maintain a development mitigation account consistent with the California Government Code 66000 et. seq. Any fee credit program shall be the responsibility of the local jurisdiction.

As an option, the local jurisdiction may arrange for SANBAG to retain the regional portion of the development contributions collected by the local jurisdiction, to be disbursed only on projects for which the local jurisdiction is responsible. This may, at the local jurisdiction's option, include SANBAG's retention of only the funds associated with the fair share contributions for interchange improvements. SANBAG reserves the right to audit transactions within local jurisdiction development mitigation funds pertaining to Nexus Study projects.

J.5. Coordinating Development Mitigation Programs for Cities with Spheres of Influence

Each jurisdiction must maintain development mitigation fund accounts for any special districts or subareas used as the basis for establishing levels of contribution from new development. Where the County of San Bernardino and a city establish a combined development mitigation program for that jurisdiction and its sphere of influence, the County shall maintain a development mitigation fund specifically for that sphere of influence, unless the city and County make an alternate arrangement that still achieves their combined fair share requirement.

In a sphere of influence, the County determines which projects will be included in the Nexus Study. Local jurisdictions and the County may negotiate a common project list. However, should there be a discrepancy between the lists, SANBAG staff will defer to the County's desired project list.

Development contributions from growth in that sphere area shall be expended on projects in that sphere area and on the sphere's share of interchange projects. The County and cities may execute alternate agreements for the management of development contributions for sphere areas. Such agreements between the County and a city governing development mitigation in the sphere area shall address the use and/or transfer of funds in the event that an annexation occurs. A copy of this agreement, or any modifications to the agreement, shall be provided to SANBAG within 30 days of execution by the city and County.

When the sphere of influence is included as part of a city's geographic area for purposes of DIF program fee calculation, it is expected that the fees for regional transportation improvements by land use type will be the same for areas within the city boundary and within the sphere. If a city or the County includes additional local (non-regional) roadway projects in their program, it is possible that the fees may vary between the city and sphere areas. Fees will still be collected by the County for unincorporated areas and spent within the sphere area from which they were collected, unless a different agreement is executed between the city and County.

The County and each individual city may jointly determine whether or not to include the sphere area as part of the city's fair share calculation. If a sphere is not included with the corresponding city for fair share calculation purposes, the County will need to delineate the alternate geographic boundaries to be used for unincorporated areas. The County will need to maintain records for individual city spheres or other County-defined geographic areas.

J.6. Expenditure of Development Contributions

Each jurisdiction will be responsible for determining when development contributions from their own development mitigation program are to be expended on projects within their jurisdiction or on their portion of projects shared with another jurisdiction. Each jurisdiction will be expected to contribute dollars to a project equal to or greater than the fair share percentage (as determined by the Nexus Study) of the actual project cost (as adjusted based on qualifying federal or state appropriations that reduce the project cost). The Measure I Strategic Plan or other SANBAG policies may identify additional requirements for use of Measure I, State, or Federal funds, and local jurisdictions should recognize that State, Federal, Measure I 2010-2040 Valley Interchange and Major Street Funds, or Victor Valley Major Local Highway Projects Funds may not be available on demand to cover the full non-fair share portion of the cost for a specific project listed in the Nexus Study. Local jurisdictions will not be forced to participate in a multi-jurisdictional project but must abide by the provisions of state law regarding collection and disbursement of development contributions. Jurisdictions requesting funds for a multi-jurisdictional project should consider executing a cooperative agreement or other instrument to clearly identify roles and responsibilities for funding and delivering that project.

Arterial Improvements - For arterial improvements and railroad grade separations, the lead local jurisdiction (jurisdiction in which the project is located) shall determine when development contributions are to be applied to specific projects and when application will be made for other funds (Measure I, State or Federal). Although each jurisdiction is responsible for its own arterial improvements under the development mitigation program, the provisions of the California Environmental Quality Act (CEQA) remain applicable when considering the impact of development projects on other jurisdictions. Adjacent jurisdictions should be informed via copies of Environmental Impact Reports (EIRs) when such impacts are identified and EIRs are prepared.

Interchange Improvements - For interchange improvements, the lead local agency (or possibly co-lead agencies where the interchange footprint is in two or more jurisdictions) determines when requests will be made for funds (Measure I, State or Federal) to be used in combination with development contributions. Application for funds will need to include commitments from the lead agency(ies) equivalent to at least the fair share amount (fair share percentage times the actual project cost). If the interchange fair share is allocated among two or more agencies, the lead agency will need to demonstrate that the collective funding commitment is equivalent to at least the fair share amount.

A loan program may be established for interchanges or arterials (i.e. arterials where the cost is shared by two or more jurisdictions) wherein some of the fair share amount can be borrowed from Measure I 2010-2040 Interchange funds or Major Street funds, subject to other limitations and finance charges, if applicable. Terms of the loan will be established by the SANBAG Board on a case-by-case basis, with written consent of all participating jurisdictions.

J.7. Additional Guidelines for Development Impact Fee Programs and special assessment districts

For DIF programs, fees will be established by each local jurisdiction. At the time when a local jurisdiction presents its development mitigation program to SANBAG for certification, the local jurisdiction must demonstrate that the entire development mitigation program established will achieve the total Nexus Study's fair share requirement for regional projects, if the projected growth occurs.

Fee and assessment districts may be established defining development contribution fair share requirements for regional transportation projects within subareas of a jurisdiction. The fair share requirements would be established based on the project costs and projected growth for that district. The development contribution requirement for the district must include the fair share of interchange improvement costs associated with that district in the SANBAG Nexus Study. Any project costs included in the special district would be excluded from the larger, jurisdiction-wide fee program.

Projects may be added to an existing special district to satisfy the fair share target amounts, but it must be demonstrated that the legal mechanism exists to assess the additional costs to development projects in that existing district. Otherwise, the additional costs for regional improvements associated with that special district must be included in the jurisdiction-wide development mitigation program. Development contributions obtained from the district would be expended on regional transportation projects in the district or on the fair share of an interchange project for which the district is responsible. The interchange portion of the district's development mitigation fund must be accounted for separately, or the special district may maintain an agreement for the local jurisdiction to manage the interchange portion of the fund in conjunction with the jurisdiction-wide development mitigation fund.

J.8. Annual Reports

The local jurisdiction must submit an annual development mitigation report to SANBAG. The annual report is an informational document and does not require approval by the local jurisdiction's elected body. If the development mitigation program contains individual districts (e.g. road and bridge benefit districts separate from a jurisdiction-wide program), reporting must be specified by district. The County must organize its annual reporting by sphere area or by other geographic subareas established in their development mitigation program. By agreement with the corresponding city, the County may include the reporting for its sphere together with the city's annual report. The annual report must contain the following information:

1. Quantity of development for which development contributions were generated by development type.
2. Total development contributions by development type.
3. Other types of development-related transportation funds applied to projects during the year (e.g. grants)
4. Funds expended from the development mitigation program (engineering, right-of-way, construction, etc.) on regional transportation projects listed in the local jurisdiction's development mitigation program. The funds expended must be

listed by individual project and must be reported for the current year and cumulatively for each project.

The annual report shall be provided to SANBAG within 90 days of the end of the fiscal year (by October 1 of each year). SANBAG will provide formats and forms (electronic and/or hard copy) for agencies to use in preparing the reports.

J.9. Compliance

Local jurisdictions must maintain their CMP development mitigation program in accordance with requirements in Appendix J. Local jurisdictions may be found out of compliance with the CMP Land Use/Transportation Analysis Program in one of the following ways:

1. Failure to adopt and maintain a development mitigation program that satisfies the CMP criteria
2. Failure to provide development mitigation program updates within the prescribed time frames
3. Failure to submit complete annual reports to SANBAG in a timely manner

The SANBAG Executive Director will notify a local jurisdiction when the jurisdiction appears to be out of compliance with the CMP development mitigation program. The jurisdiction has 90 days to bring its development mitigation program into compliance following the public hearing mandated in State law. If the program is not brought into compliance within the designated period, the Executive Director will recommend a finding of non-compliance to the SANBAG Board of Directors. At that point, the provisions of state law will be applied regarding withholding of Section 2105 gas tax dollars and re-establishment of compliance with the CMP.